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*Attorneys for Defendant*  
INTERNATIONAL BUSINESS MACHINES CORP.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CINDY M. HOLMES,

Plaintiff,

- against -

IBM,

Defendant.

05 Civ. 2950 (CM) (MDF)

**DEFENDANT'S LOCAL CIVIL  
RULE 56.1 STATEMENT OF  
UNDISPUTED MATERIAL FACTS**

Pursuant to Local Civil Rule 56.1, Defendant International Business Machines Corporation ("IBM") submits this statement of undisputed material facts in support of its motion for summary judgment.<sup>1</sup>

1. Plaintiff, Cindy Holmes, is African-American. **Compl. ¶ 1 (Ex. J).**<sup>2</sup>
2. IBM hired Plaintiff in July 2000 at a Band 3 level. **Pl. Dep. 87, 113 (Ex. A59); Plaintiff Work History Detail Report (Ex. B).**

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<sup>1</sup> IBM reserves the right to dispute any of the facts set forth herein in any subsequent stage of this proceeding.

<sup>2</sup> All exhibits referenced in this memorandum are attached the accompanying Declaration of Allan S. Bloom, dated March 15, 2006. "Pl. Dep." refers to the transcript of Plaintiff's January 9, 2006 deposition..

3. Dawn Powell-Manso (“Powell-Manso”) was Plaintiff’s supervisor from July 2000 to August 2002. **Pl. Dep. at 88 (Ex. A3); Powell-Manso Decl.<sup>3</sup> ¶ 6 .**

4. Powell-Manso did not promote Plaintiff from Band 3 to Band 4 in 2002. **Pl. Dep. 141 (Ex. A60).**

5. Powell-Manso promoted Jodi Spiecker (“Spiecker”) from Band 3 to Band 4 in May 2002. **Pl. Dep. 141-42 (Ex. A31); Spiecker Work History Detail Report (Ex. C).**

6. Plaintiff does not believe Spiecker was “unqualified” for a promotion from Band 3 to Band 4 in May 2002. **Pl. Dep. 143-44 (Ex. A61).**

7. Plaintiff does not think Powell-Manso should not have promoted Spiecker in May 2002. **Pl. Dep. 153 (Ex. A10).**

8. Plaintiff does not know the basis for Powell-Manso’s promotion of Spiecker in May 2002. **Pl. Dep. 153-54 (Ex. A62).**

9. James DiPietro (“DiPietro”) was Plaintiff’s supervisor from August 2002 to mid-July 2003. **Pl. Dep. at 160 (Ex. A12); DiPietro<sup>4</sup> Decl. ¶ 5.**

10. Michael Scarano (“Scarano”) was Plaintiff’s supervisor from mid-July 2003 to October 2003. **Pl. Dep. at 171-72 (Ex. A63); Scarano Decl.<sup>5</sup> ¶ 10.**

11. Neither DiPietro nor Scarano promoted Plaintiff from Band 3 to Band 4 during her tenure in their respective departments in 2003. **Pl. Dep. 188-89 (Ex. A64).**

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<sup>3</sup> “Powell-Manso Decl.” refers to the accompanying Declaration of Dawn Powell-Manso, dated March 15, 2006.

<sup>4</sup> “DiPietro Decl.” refers to the accompanying Declaration of James DiPietro, dated March 14, 2006.

<sup>5</sup> “Scarano Decl.” refers to the accompanying Declaration of Michael Scarano, dated March 14, 2006.

12. Neither DiPietro nor Scarano promoted any employee from Band 3 to Band 4 during Plaintiff's tenure in their respective departments in 2003. **DiPietro Decl. ¶ 16; Scarano Decl. ¶ 11.**

13. Plaintiff does not know if the reason she did not receive a promotion from Band 3 to Band 4 in 2003 relates to her race. **Pl. Dep. 202-03 (Ex. A65).**

14. Jason Silbergleit ("Silbergleit") was Plaintiff's supervisor from October 2003 to July 2004. **Pl. Dep. at 198 (Ex. A66); Silbergleit Decl.<sup>6</sup> ¶ 5.**

15. Silbergleit did not promote Plaintiff from Band 3 to Band 4 in 2004. **Pl. Dep. 213-14 (Ex. A67).**

16. Silbergleit promoted Diana Kloepping ("Kloepping") and Jennifer Morningstar from Band 3 to Band 4 in May 2004. **Id.**

17. Plaintiff does not know of any reason why Kloepping should not have been promoted from Band 3 to Band 4 in 2004. **Pl. Dep. 214-15 (Ex. A19).**

18. Alan Piciacchio ("Piciacchio") was Plaintiff's supervisor from July 2004 to January 2006. **Pl. Dep. at 213 (Ex. A68); Piciacchio Decl.<sup>7</sup> ¶ 5.**

19. Piciacchio did not promote Plaintiff from Band 3 to Band 4 during 2005. **Pl. Dep. 246-47 (Ex. A69).**

20. Piciacchio promoted Brenda Belladone-Edwards ("Belladone-Edwards") from Band 3 to Band 4 in May 2005. **Pl. Dep. 246 (Ex. A21).**

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<sup>6</sup> "Silbergleit Decl." refers to the accompanying Declaration of Jason Silbergleit, dated March 15, 2006.

<sup>7</sup> "Piciacchio Decl." refers to the accompanying Declaration of Alan Piciacchio, dated March 14, 2006.

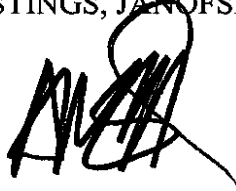
21. Plaintiff does not believe that Belladone-Edwards should not have been promoted from Band 3 to Band 4 in 2005. Id.

22. Plaintiff does not know what factors Piciacchio considered in determining whether to promote Belladone-Edwards from Band 3 to Band 4. Id.

Dated: New York, New York  
March 15, 2006

Respectfully submitted,

PAUL, HASTINGS, JANOFSKY & WALKER LLP



By:

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**CERTIFICATE OF SERVICE**

The undersigned member of the Bar of this Court hereby certifies that, on **March 15, 2006**, she caused to be served a true and correct copy of the attached **Defendant's Local Civil Rule 56.1 Statement of Undisputed Material Facts**, on the following counsel via overnight mail:

**Michael H. Sussman, Esq.**  
**Law Office of Michael H. Sussman**  
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**P.O. Box 1005**  
**Goshen, New York 10924**

Dated: New York, New York  
March 15, 2006

  
LAURA MARINO